

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3071 of 1984

WITH

SPECIAL CIVIL APPLICATION No 3073 of 1984

WITH

SPECIAL CIVIL APPLICATION No 2145 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAWANJI PREMJI THAKKAR

Versus

SUDHABEN ANCHALIA,

Appearance:

(In all SCAs)

MR YS MANKAD for Petitioner

MR VB GHARANIA for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. In all these Special Civil Applications, the facts and grounds raised are common and as such they are

being disposed of by this common order. The facts, for the purpose of deciding these Special Civil Applications are being taken from Special Civil Application No.3071 of 1984 which are that the petitioner joined services as Junior Clerk in the Kutch District Local Board on 12th July 1954. He was confirmed on 1st January 1955. At that time, in the then Kutch District Local Board there was no rule that one should pass Accounts examination before he can be appointed or retained or promoted in the service as was position in the case of the employees of the then Bombay State under the Rules 1950. The Gujarat State was formed on 1st May 1960. The Ex-District Local Board Clerks were absorbed in Revenue services. The petitioner, on 15th April 1963 was allocated to Panchayat Service. At that relevant time, the promotions were being granted according to seniority and there was no condition that promotions will be only available on passing or that it will be given as from the date of passing departmental Accounts examination. The Bombay Rules which required passing of the aforesaid examination were applied to the Ex-District Local Board's employees of Kutch in the year 1960, but none of the petitioners were informed of that fact. The grievance of the petitioners is that even under those Rules they were to pass Accounts examination within five years. These Rules were amended in the year 1966 and as per the amended Rules the aforesaid examination was to be passed within one year from 1st November 1966, i.e. upto 1st November 1967. This time was further extended under the Government Resolution dated 23rd July 1968 upto the examination to be held in October 1968 and 1969. So the petitioner contends that the Ex-District Local Board employees were given time to pass the aforesaid examination upto October 1969. On passing of the said examination within stipulated period their original seniority according to length of services was to be retained and the promotions were to be granted as per inter-se seniority. During the period from 1960 onwards many of the Clerks were given promotion according to seniority only. Some of them were juniors to the petitioner, i.e. Ex-Kutch District Local Board employees, namely Mr. N.D. Parmar, Mr. D.K. Bhanushali, Mr. N.R. Patel, Mr.B.P. Pandya, Mr.H.N. Jobanputra, Mr. P.G. Bhanushali and Mr. K.D. Joshi. It is grievance of the petitioner that those persons were junior and have also not passed the examination but given promotions. Not only this but some of them were given further promotion to the post of Taluka Development Officers, Deputy District Development Officers etc. Some of those persons belonging to Revenue Department but allocated to District Panchayat like the petitioners were

also given promotions without passing of the examination. They were given deemed date of promotion. Prayer has been made by the petitioner that they should be promoted in the like manner as it has been done in the case of junior persons in service. The petitioner was given promotion under the order dated 2nd September 1966. It is the case of petitioner which is not disputed by the respondent that Accounts examinations were not held in the year 1963, 1964 and 1965. The examination was held only in the year 1966 and the petitioner passed the said examination in October 1967 within the stipulated time. The petitioner contended that the deemed date of promotion should not be September 1966 but it should be much prior thereof when the persons junior to him were promoted in the year 1963. Though orally promised but nothing has been done and therefore he made an application to the then District Development Officer. In the gradation list which has been published, the petitioners were placed senior to many of the persons who have been given promotion earlier to them in the year 1963. In the year 1975, the District Development Officer, vide his letter dated 26/27th May 1975 replied that deemed date of promotion cannot be given to the petitioner as he has not passed examination in the year 1965. The petitioner thereafter filed an appeal before the Development Commissioner, Gujarat State, Gandhinagar, who was the last final appellate authority under the law at that time. The appeal filed by the petitioner was heard by the then Additional Development Commissioner who allowed the same under the order dated 29th October 1975 and held that as per the amended Rules dated 1st November 1966, and the government Resolution dated 23rd July 1968 the petitioner had passed the examination within time because the time was extended upto October 1969. It has further been ordered that since the petitioners were senior to Mrs.N.S.Doshi, the pay of the petitioners should be fixed accordingly and deemed date be given. Though the petitioner's case was comparable to that of Mr. B.M. Mehta who was given promotion on 4th September 1963, in the order the Additional Development Commissioner has given reference to the case of Mrs.N.S.Doshi, as on the very day that authority has decided her case also. The case of the petitioner is that his case was not connected in any way with that of Mrs.N.S.Doshi, but he claimed and is entitled for promotion from the date 4th September 1963 when Mr.B.M. Mehta has been promoted. It is not in dispute that the order of the Additional Development Commissioner dated 29th October 1975 was not assailed by the District Development Officer or the State government in any appropriate legal forum and as such, it attained

finality. The District Development Officer, under its order dated 9th December 1975 has given effect to the order of the Additional Development Commissioner dated 29th October 1975 and fixed the deemed date of promotion of the petitioner as 27th October 1963 considering the case of Mrs. Doshi though in fact, the deemed date i.e. 4.9.63, the date on which Mr. B.M. Mehta was promoted should have been given.

3. Then after three years of passing of the above order the District Development Officer published a provisional gradation list of the employees of Cooperative Department. The petitioner, as stated earlier, was absorbed in the Revenue Department, but even then he was shown in the aforesaid list. Not only this, his deemed date of promotion also changed from 27th October 1963 to 28th December 1967. This action of the respondent, District Development Officer was illegal.

4. The petitioner filed appeal No. 9 of 1979 against the aforesaid order before the Gujarat Civil Services Tribunal. The grievance has been made in the appeal against the wrong change of deemed date of promotion. While the aforesaid appeal was pending, the District Development Officer cancelled his order dated 24th October 1978 because this Court held that since the Gujarat Panchayat Servants Selection Board had not held the necessary examination, the Panchayat employees cannot be denied promotion on the ground that they have not passed the required departmental examination. Rightly, the Tribunal also dismissed the appeal of the petitioner on the ground that the order impugned therein was itself cancelled and no cause of action survived. The order has been passed by the Tribunal on 10th March 1981. The District Development Officer, on 4th February 1982, passed a suo-motu order cancelling the order dated 9th December 1975 and cancelling thereby the deemed date of promotion given to the petitioner i.e. 27th October 1963. The deemed date of promotion of the petitioner was fixed to be 6th September 1966. The petitioner challenged this order by filing appeal before the Gujarat Civil Services Tribunal but the appeal was dismissed on 3rd April 1984 and hence this Special Civil Application.

5. This Court issued Rule in these matters and interim relief has been granted in favour of the petitioners restraining the respondents from revising pay of the petitioners on the basis of impugned order and judgment and from recovering or taking any steps or proceedings towards recovering any amount from the petitioners.

6. Mr. Mankad, learned counsel for the petitioners contended that both the District Development Officer as well as the Tribunal have proceeded on assumption that the case of the petitioners is comparable with the case of Mrs. Doshi. It has next been contended that the Additional Development Commissioner, though while giving relief to the petitioners in the appeal made reference to the case of Mrs. Doshi, but real claim of the petitioners for promotion was qua Mr. Mehta who was junior to them. Even if for any reason the deemed date of promotion given to Mrs. Doshi has been withdrawn by the District Development Officer, then merely on this count the deemed date of promotion of the petitioners could not have been changed. The case of the petitioners should have been considered with reference to the case of Mr. Mehta.

7. On the other hand, the learned counsel for the respondent supported the order of the District Development Officer as well as the Tribunal.

8. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

9. The District Development Officer as well as the Tribunal have committed a serious error in not considering the case of the petitioners regarding deemed date of promotion with reference to the case of Mr. B. M. Mehta. In these Special Civil Applications, reply has not been filed by either of the respondents and as such, the averments made by the petitioners that Shri B. M. Mehta who was also Ex-District Local Board employee of the Kutch was junior to the petitioner and he has been given promotion without passing the examination goes uncontroverted. In view of these facts, the claim of the petitioners for deemed date of promotion could have been considered with reference to the case of Mr. B. M. Mehta and only in case after hearing them and adjudicating the claim the authority is satisfied that the claim is not sustainable, then only the deemed date of promotion could have been changed.

10. The Additional Development Commissioner made an order in favour of the petitioners and if incidentally it felt satisfied to give benefit to the petitioner with reference to the case of Mrs. Doshi, then in the eventuality where for any reasons Mrs. Doshi's case has been reviewed then only on that count the petitioners could have been denied of their claim. The respondents should have proceeded in a way so as to advance justice and to avoid hardships to the petitioners. It was

obligatory on the part of the District Development Officer to consider the claim of the petitioners for deemed date of promotion with reference to the case of Mr.Mehta, which precisely has not been done in the present case. Otherwise also, this Court has protected the petitioners by grant of interim relief and by now the petitioners would have retired on attaining the age of superannuation.

11. Taking into consideration the totality of the facts of the case, the order of the District Development Officer dated 4th February 1982 cannot be allowed to stand and the same is accordingly quashed and set aside. On quashing and setting aside the aforesaid order, the order made by the Gujarat Civil Services Tribunal dated 3rd April 1984 also automatically goes.

12. The net result of the above discussion is that these writ petitions succeed and the same are allowed. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)